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BRIEFER COMMUNICATIONS.

THE POSITION OF THE AMERICAN REPRESENTATIVE IN CONGRESS.

Probably the oldest among modern systems of government is that in which the people have for their share merely the obeying of the law with little or no influence in its formation. This doctrine has been superseded in the United States, and indeed in most countries of the world, by the belief that the people are the real rulers and that some form of representative institutions is the only reasonable method of government. We consider it almost a natural right that every second year we should express our opinion of our previous legislators by the choice of their successors. Having thus accepted representative government as an accomplished fact there remains for the American citizen the further question of the relationship existing between the Congressman and his constituents. In other words, what position does the representative at Washington hold during his term of office? Does he represent the people of his district, of his State or of the country at large? Is he sent to the seat of government to use his own judgment on the questions which arise or is he merely the telephone through which his constituents express their opinions?

As one answers these questions the whole framework of our government is turned toward or away from an extreme democracy. To the man like Rousseau, the representative is but the agent of the people, liable to dismissal at any time; to a man like Locke he is the statesman chosen to think for the people and chosen because of his ability to think wisely. These are questions on which division of opinion has been prevalent since our government was instituted; let us see what the constitution makers themselves thought of the matter. This in its turn necessitates an examination of the conditions which led to the calling of the Constitutional Convention.

The great and insurmountable difficulty of government under the Articles of Confederation had been the position of independence which they granted to the individual States. Although there was in theory a body which occupied the position of superiority formerly held by Great Britain, the States were practically independent and it became evident that one of two things must happen,—either the authority of the central power must be strengthened or it soon would be entirely thrown off. The former of these alternatives being accepted by the convention we find two distinct plans advanced. In principle they were wholly at variance. "Representation of the people at large is

the basis of one . . . and a majority of the people of the United States must prevail; the State legislatures are the basis of the other."* "The gentlemen on one side maintain that the States are districts of people composing one political society; those on the other maintain that they are so many (distinct) societies."† In a consideration of our final constitution we must remember that it was the first or Virginia plan which formed the basis of the final document; it is, therefore, to that plan rather than the other we must look for a clear understanding of our forefathers' intention. Now in that original plan the word "national" occurs over forty times and although as a concession to certain members this word was stricken out the debate clearly shows that no difference of meaning was intended.‡ On the other hand, while the preamble of the original document reads: "We, the people of the States of Massachusetts, New Hampshire," etc., the revised constitution has the bold affirmation: "We the people of the United States," and this change was before the convention for many days, in the course of which the opinion is several times expressed that the States are sub-divisions of the United States and not the United States an assembly of the States.§ Surely one cannot say that the Northwest territory is an assemblage of the five States *into which it—one whole—was divided*. Rather the necessities of government owing to difficulties of communication demanded subdivisions and as thirteen convenient subdivisions already existed in the original territory there was no need of creating new ones, yet the principle seems clear.

Chief Justice Marshall in his decisions expressed this view so thoroughly that no further judicial interpretation has been necessary: "When the American people created a national legislature with certain enumerated powers, it was neither necessary nor proper to define the powers retained by the States. These powers proceed not from the people of America but from the people of the several States, and remain after the adoption of the constitution what they were before, except so far as they may be abridged by that instrument."|| What clearer exposition could be wished of the doctrine that "the people of the States are units in giving power to State officers, and the people of the United States are a unit in giving powers to United States' officers."¶ It is not only to friends of the Virginia plan that we can

* Wilson in the convention, Elliot's "Debates," Vol. v, p. 195.

† Dr. Johnson, *Ibid.*, p. 255.

‡ *Ibid.*, p. 214.

§ *Ibid.*, pp. 212-33.

|| Sturgis vs. Crowninshield, 4 Wheat., 192. (See also 9 Wheat., 187.)

¶ Hare: "Const. Law," Vol. i, p. 13. See Washington's letter to Gordon in Bancroft's "History of the Constitution," Vol. i, p. 320.

turn for support of this view; the arguments for the New Jersey scheme show that its advocates considered the rival measure as having this effect.* It is true that when the people accepted the constitution they assembled in their several States, but as Marshall says: "Where else should they have assembled . . . when they act they act in their States, but the measures do not cease on that account to be the measures of the people themselves."† Thus our forefathers intended to found a government of the people, and it is in the popular branch of the national legislature that we find the best example of the fulfillment of their purpose. The members of this body were designed to be representatives, not of a district for it is universally admitted that they may be chosen by the State-at-large, as Maine has done until recently, and as many of the States did at the outset, nor of the State but of the nation,‡ and are bound to have her best interests constitute the weight which decides their votes. No provision is made by which their own immediate constituents have more right to influence them through the press, or by petition than have citizens of other sections of the country. True the constitution provides that every State shall have at least one representative, and that these representatives shall be residents of the State from which chosen, but at that time the States were units, each having a history and interests of its own, this provision being merely the employment of the simplest means to insure every important interest and section having a member at the capital, who, presumably, had an intimate acquaintance with its needs and opinions. Having thus gathered together a body of men who shall collectively be well informed concerning the interests of the various portions of the country the evident intention of the constitution is that the House, as a whole, shall act for the country as a whole. The Continental Congress had furnished a good example of the results sure to follow should members consider themselves bound exclusively by the interests of their own district.

It would seem that the advocates of the delegate principle had a far stronger case in the position occupied by the Senate, yet even here the weight of the argument is against them. Chosen by the legislature of the State the Senator represents the State as a government, all the States being regarded as of equal importance. The fact that these legislatures are in session at the same time as the national chambers furnishes a somewhat plausible ground for the theory that the Senator is responsible to the body which elected

* Elliot, Vol. v, passim.

† McCulloch vs. Maryland, 4 Wheat., 316.

‡ Thus Mr. Wilson remarks: "Will a citizen of Delaware be disgraced by becoming a citizen of the United States?"

him, and there have been Senators who considered themselves bound to obey its instructions. Others have looked to the legislatures of their respective States for vindication when their acts were unpopular at Washington, but the other no less important fact that the political complexion of the State legislature may change during the Senators' term, and that the two Senators from the same State may not agree has worked against this view. The feeling in favor of senatorial responsibility has been slight, and has been on the decrease since the States rights epoch until we now see a Senator from Nevada definitely announcing his change of political opinions, and retaining his seat without even asking his State legislature for a justification.

In the lower chamber the opportunity for this feeling of responsibility is much less than in the Senate. While the diversities of interests in the individual States have the same effect as with the Senator if the representative attempts to represent the whole State there is not the fiction of an ever present gathering of the body which elected him. The representative is chosen by the voters of the United States, and not only is there no definite means provided for instruction or advice, but there is no plausible method by which the opportunity for such instruction may be inferred. True, the State elections are occasionally so cited, but there is no marked tendency that way, and what little there is may be considered rather as the result of State battles being fought largely on national issues, a condition which cannot be thought of as the logical intention of the framers of the constitution. If, indeed, the other view were taken, and Congressmen were considered as agents responsible to their constituents, then is the unity of our government gone, and we are reduced to the condition of the Confederation, except that instead of thirteen clashing interests we should have nearly four hundred.

If our fathers had wished that on every measure and at every time the will of the majority of voters should have been definitely ascertained, it would have been easy for them to have introduced the delegate system in a less ambiguous manner. Nothing would have been simpler than that some form of the referendum should have been provided for, or that the people should have been given the right of initiative. The fact that special provisions were made allowing such expression of opinion on Constitutional amendments shows that this system was familiar to the convention, while the fact that it was not adopted for ordinary laws is a forcible objection to any delegate theory resting on a forced construction of the constitution. We have then, the two principles: first, that representatives are delegates of the bodies which elect them, or second, that they speak and act for the country as a whole. We have seen the former of these views rejected

by the constitution makers, and the latter incorporated into the constitution as the ideal which was to be sought. What has been the practical result?

As in many other cases, we find the outcome a compromise. This compromise has on the whole been brought nearer to the ideal than to the rejected view but by means of agencies whose force was not appreciated when the constitution was framed, upon which the constitution makers did not count but whose influence has been increasing ever since. Foremost among these agencies is the growth of parties and party spirit. On every question of great partisan importance the representative is first of all a member of his party. Thus on the late tariff bill it required more independence than many Democratic members possessed to vote against the measure, although there were several who probably considered the McKinley tariff fully as good for their particular district and others who judged with the President, that a better measure ought to have been attained. The argument that the Democratic party as a whole, was in favor of some measure of tariff reform, that the party leaders said the Wilson-Gorman bill was the best attainable, was most effective in securing the passage of the law. In 1890 we see the same conflict with the same outcome in the Republican ranks. Thus on prominent party questions the average member acts for the benefit of his party as a whole, and although he is responsible to the party leaders of his own district, this is but another way of saying he is responsible to his party leaders throughout the country. Any member who acts independently of party at Washington, finds his re-nomination extremely difficult and the growth of the system of gerrymandering, by consolidating the power of the dominant parties has aided in the same result. Thus on important party questions we find Congressmen representing, not their immediate constituents but their party at large, and as the two leading parties extend more and more over the whole country, this can but mean a decrease of sectionalism and a binding of the whole country together.

On other than party questions and especially in the great matter of expenditures, we might appear to be faced by a somewhat different situation. These matters are of much more relative importance than one is apt to think when he considers the proportionate amount of time devoted to the tariff. Yet even on such questions when his district is not a close one, the member is responsible to a group of a dozen leaders in his own constituency, *i. e.*, to his party. It may be that by a strict regard to the best interests of his own individual district, he might be able to poll more votes on election day, but what of that, the real fight is for the nomination, and here it is the influence of party which determines the result. Should one member have a

constituency nearly evenly divided politically, it may be supposed that in this case, at least, he would vote as his district commanded, indeed, that he would be compelled to do so. Two important considerations remain which seriously limit this, the sole opportunity, for the growth of the delegate principle. In the first place, of the thousands of bills presented to Congress for its approval, probably not one per cent are of any interest whatever to our supposed district. What concern is it to the city of New York whether the Illinois river be improved? What difference does it make to the commercial section of Michigan whether the mining interests in the northern peninsula be developed? The main interest which confronts our member is: Will the proposed measure strengthen my party or can we disgrace the majority by defeating a measure of theirs? Thus another class of measures is eliminated.

The second consideration is even more weighty. It is this: No proposition has a chance of coming before the House which has not been approved by the leaders of the dominant party. The business of our lower chamber has become so great that some organization has had to be perfected by which the grain could be selected from the chaff. The committee system being adopted we see, from the outset, those committees chosen by the majority party, at first by ballot and later by the speaker. The result of this last development has been that the speaker of the National House of Representatives backed by the Committee on Rules and by the Chairmen of the Committees on Appropriations and Ways and Means controls the whole business of the House. The speaker being pre-eminently a party leader, and choosing these colleagues from his own party it must follow that all the legislation of the session is regarded primarily in its relation to the interests of the party throughout the nation. A member who does not stand well with these party leaders finds himself in a very unenviable position when he attempts to bring forward a measure of his own. Let us suppose that the Congressman from the second Delaware district thinks a measure brought forward by his party's committee is hostile to the best interests of his district; he therefore opposes it, and uses all his influence to persuade other Congressmen to vote against it. Let us even suppose that he succeeds in defeating the proposal; what is the consequence? Merely that when our Congressman wishes to be recognized by the speaker he finds him looking in another direction, and that when he finally succeeds, on some Monday, in introducing his own measure it is referred to a committee and never heard of again.

While on all subjects of legislation the reign of this governing board is absolute I do not mean to imply that none but distinctively party measures are allowed before the chamber. Other bills come

before the House, and on these the member should, and to a certain extent does, exercise his best judgment, especially if he represents a district whose party leaders consider national issues of prime importance, and expect the member to use his discretion on minor matters. What I do mean is that all measures have to run the gauntlet of a party committee, and be recognized as not opposed to the party's interests before they are placed on the calendar, and that it depends on the character of the prominent party men within his district, whether or not the member may use his individual judgment on such neutral measures. If these leaders are not broad-minded men, then, although we may see representatives declining to waste their time in dividing offices among their constituents, and using their best judgment on all questions before the House, it will probably happen in the future, as in the past, that the independent may approve his attitude, but the party nomination will go to another man. In other words, we are in a régime of party government, and it is only as parties so improve that divisions are made on great issues alone that each representative will be free to vote on minor issues independently of party, at the same time being a sturdy adherent of that party which, on the all important issue, seems to him to be in the right.

It may be said that the numerous "junketing" measures which pass our Congress are proofs that it is the district and not the nation which is represented. Without doubt there is some truth in this assumption, but it is due, not to our system, but to the character of our parties. As long as they depend for votes, not on a general party program, but on grants to particular districts, so long must we expect just this result. I do not mean to imply that two compact parties, each having branches in every section of the country and each depending for its supremacy on a clearly defined and closely followed policy of national importance is, or is not, the ideal form of government. England seems to be drifting away from the strict party divisions formerly so prominent, but this question is foreign to our discussion. What I do think is that in the existing United States with the present tendency toward party government, the nearer such a condition of affairs is reached, the nearer will our Congressmen come to being representatives of the nation at large and not of the particular district from which they come. Back of this lies the great reform of so educating the people, that a party which does not stand honestly for its platform because in its opinion the principles there set forth are best for the whole country, will be unable to gain the suffrages of the nation.*

* At present it is probable that no party pretends to be governed in its future action by its platform professions and in a short time the platform will exert little or no influence in an election. Parties, in the writer's opinion, should divide on major issues alone, the minor issues, if any, being of importance only in the selection of the individual candidate.

In a word, then, on important matters our representatives are responsible to their party at large, on minor matters they may be, and at present are, responsible to the party leaders in their districts. What should be done is so clearly to define leading issues and the party attitudes upon them that they, and they only, shall determine the lines of division within the district, thus leaving the representative free on neutral matters to use his own best judgement.

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A NOTE ON ECONOMIC THEORY IN AMERICA PRIOR TO 1776.

In a study of the Pennsylvania experiment in paper money, covering the period from 1723-1775, the writer came upon some statements of economic theory that may prove interesting to readers of the ANNALS. We have put these together in an informal way, trusting that the dates of their publication, all prior to 1776, will be sufficient justification for their present resurrection.

Franklin, writing in 1729* in defence of a paper currency, says: "On the contrary, as a plentiful currency will occasion a less consumption of European goods in proportion to the number of people, so it will be the means of making the balance of our trade more equal than it now is." Here we have, at least by implication, the old notion that for any country to have the balance of trade against it, is an unmitigated evil.

Governor Pownall,† on the other hand, held that there were conditions under which this fact that the balance of trade was against a country, might be evidence of its progress and prosperity. In 1765, in his "Administration of the Colonies," page 110 of the second edition, he writes: "An increasing country of settlers and traders must always have the balance of trade against them, for this very reason, because they are increasing and improving, because they must be continually wanting further supplies which their present circumstances will neither furnish nor pay for. . . ."

"In the common cursory view of things, our politicians, both theorists and practitioners, are apt to think that a country which has the balance of trade against it, and is continually drained of its silver currency, must be in a declining state; but here we may see that the progressive improvements of a commercial country of settlers, must necessarily have the balance of trade against them, and a decreasing

* "The Works of Benjamin Franklin." By Jared Sparks, Vol. ii, p. 260. Boston: Hilliard Gray & Co., 1840.

† "The Administration of the Colonies." By Thos. Pownall, second edition, p. 260. London: J. Dodsley, 1765.